IV. This Lloyds Case in Overview

The course of this tortuous lawsuit has flowed from solicitations of a prospective Utah investor by visiting British insurance representatives in 1978 to adjudications "irrevocably and unconditionally" submitted to the English Courts. A "Name", trusting the "entire good faith" of Lloyds of London, later agreed in 1986 in an unnegotiated, convoluted Agency Agreement having lurking consequences that he would make "no off-set, counterclaim or other deduction on any account whatsoever"; that he "would accede to all agreements required by the Council"; and that he would be bound by Lloyds Acts, not then disclosed.

The Lloyds Act of 1982 *exempted*:

> the Society from liability in damages at the suit of a member of the Lloyd's community. . . . Whether for negligence or other tort, breach of duty or otherwise, in respect of any exercise of omission to exercise any power, duty or functions conferred by Lloyd's Act 1871 to 1982.

Lloyds pattern of deceptively calculated agreements received scholarly analyses particularly by Professor of International Law Emeritus Courtland H. Peterson, 60 LA. L. Rev. 1259 (2000) and Darrell Hall, 97 Colum. L. Rev. 57 (1997). Professor Peterson faulted a due process breakdown in justice for American Names to a "me-too-ism" [*Ibid.* at 1274 -1275] by federal circuit courts in allowing enforcement of unconscionable and statutorily violative clauses in deference to the English system. The learned professor made profound penetration into cases such as *Ashenden*, 233 F.3d 473 (7th Cir. 2000) and their implications.

Contrary to the *Erie* doctrine, circuit court cases created a verboten variant of federal common law, and implicitly ignored the supremacy of state law. The cases mock historic Anglo-American jurisprudence regarding the fiduciary duties of agents to a principal, and current ethics in international business transactions.[2] Professor Peterson recommended that:

> An important first step in setting the record straight would be an outright reversal of *Ashenden*. . . .

60 LA. L. REV. 1259, p. 1279 ¶ 2.

Not based upon a treaty or applicable national statute, the Tenth Circuit Court followed an erroneous "federal common law" trend that allowed a foreign-country judgment (England) to be enforced in a state (Utah) without perceptive regard for predicate threshold jurisdictional limitations (§ 1332) or the transcendent federalism principle mandated by the U.S. Rules of Decision Act.

Respectfully submitted,

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[2] An intriguing footnote is that the same Judge Posner who wrote *Ashenden* and the often repeated notion that it would be "risible" to suggest the English system would not be a sufficient protector of American and international standards, **concurred** in *Indiana Gas* [141 F3d. 314 (7th Cir. 1998)] which dismissed that case then before it for lack of diversity jurisdiction.